

Internal Revenue Service, Treasury

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for the affected year or years will be zero, unless the IRS waives the application of this paragraph (e)(2)(ii) upon a showing of good cause for the delay.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (e):

Example 1. (i) X Corporation is a calendar year taxpayer engaged in the sale of electric energy generated by a nuclear power plant. The plant is owned entirely by X. On May 27, 2010, X transfers a 60-percent qualifying interest in the plant to Y Corporation, a calendar year taxpayer. Before the transfer, X had received a schedule of ruling amounts containing an annual ruling amount of \$10 million for the taxable years 2005 through 2025. For 2010, neither X nor Y files a request for a revised schedule of ruling amounts.

(ii) Under paragraph (e)(1)(i) of this section, X's ruling amount for 2010 is calculated as follows: $(\$10,000,000 \times .40) + (\$10,000,000 \times .60 \times 146/365) = \$6,400,000$. Under paragraph (e)(2)(i) of this section, Y's ruling amount for 2010 is calculated as follows: $\$10,000,000 \times .60 \times 219/365 = \$3,600,000$. Under paragraphs (e)(1)(iii) and (e)(2)(ii) of this section, X and Y must file requests for revised schedules of ruling amounts by March 15, 2012.

Example 2. Y Corporation, the sole owner of a nuclear power plant, is a calendar year taxpayer. In year 1, Y elects to make a special transfer under section 468A(f)(1) to the nuclear decommissioning fund Y maintains with respect to the plant. The amount of the special transfer is \$100x, and the remaining useful life of the plant is 20 years. Y obtains a schedule of deduction amounts under § 1.468A-8T(c) permitting a \$5x deduction each year over the 20-year remaining useful life, and deducts \$5x of the special transfer amount in year 1, year 2, year 3, and year 4. On the first day of year 5, Y transfers a 25% interest in the plant to an unrelated party. Under paragraph (c)(1)(ii) of this section, Y may deduct in Year 5 the unamortized special transfer deduction corresponding to the portion of the plant transferred (25 percent of \$80x or \$20x). In addition, under paragraph (e)(1)(ii) of this section, Y may deduct the portion of the deduction amount for year 5 from the schedule of deduction amounts corresponding to its retained interest in the plant (75 percent of \$5x or \$3.75x). Pursuant to paragraph (e)(1)(iii) of this section, Y must file a request for a revised schedule of ruling amounts by March 15 of year 7.

(f) *Anti-abuse provision.* The IRS may treat a disposition as satisfying the requirements of this section if the IRS determines that this treatment is necessary or appropriate to carry out the

purposes of section 468A and §§ 1.468A-1 through 1.468A-9.

[T.D. 9512, 75 FR 80701, Dec. 23, 2010, as amended by 76 FR 3837, Jan. 21, 2011]

§ 1.468A-7 Manner of and time for making election.

(a) *In general.* An eligible taxpayer is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund or for a special transfer under § 1.468A-8 only if the taxpayer elects the application of section 468A. A separate election is required for each nuclear decommissioning fund and for each taxable year with respect to which payments are to be deducted under section 468A or a special transfer is made under § 1.468A-8. In the case of an affiliated group of corporations that join in the filing of a consolidated return for a taxable year, the common parent must make a separate election on behalf of each member whose payments to a nuclear decommissioning fund during such taxable year are to be deducted under section 468A and each member that makes a special transfer under § 1.468A-8 with respect to such year. The election under section 468A for any taxable year is irrevocable and must be made by attaching a statement (Election Statement) and a copy of the schedule of ruling amounts provided pursuant to the rules of § 1.468A-3 to the taxpayer's Federal income tax return (or, in the case of an affiliated group of corporations that join in the filing of a consolidated return, the consolidated return) for such taxable year. The return to which the Election Statement and a copy of the schedule of ruling amounts is attached must be filed on or before the time prescribed by law (including extensions) for filing the return for the taxable year with respect to which payments are to be deducted under section 468A.

(b) *Required information.* The Election Statement must include the following information:

(1) The legend "Election Under Section 468A" typed or legibly printed at the top of the first page.

(2) The electing taxpayer's name, address and taxpayer identification number (or, in the case of an affiliated

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group of corporations that join in the filing of a consolidated return, the name, address and taxpayer identification number of each electing taxpayer).

(3) The taxable year for which the election is made.

(4) For each nuclear decommissioning fund for which an election is made—

(i) The name and location of the nuclear power plant to which the fund relates;

(ii) The name and employer identification number of the nuclear decommissioning fund;

(iii) The total amount of actual cash payments made to the nuclear decommissioning fund during the taxable year that were not treated as deemed cash payments under § 1.468A-2(c)(1) for a prior taxable year;

(iv) The total amount of cash payments deemed made to the nuclear decommissioning fund under § 1.468A-2(c)(1) for the taxable year;

(v) The total amount of any special transfers (whether in cash or property) made to the nuclear decommissioning fund under § 1.468A-8 during the taxable year that were not treated as deemed transfers under § 1.468A-8(a)(4) for a prior taxable year;

(vi) The total amount of any special transfers (whether in cash or property) deemed made to the nuclear decommissioning fund under § 1.468A-8(a)(4) for the taxable year; and

(vii) For each item of property included in the amounts described in paragraph (b)(4)(v) or (vi) of this section, the amount of the item of property and whether the basis of the item of property is determined under § 1.468A-8(b)(5)(iii)(A) or § 1.468A-8(b)(5)(iii)(B).

[T.D. 9512, 75 FR 80701, Dec. 23, 2010]

§ 1.468A-8 Special transfers to qualified funds pursuant to section 468A(f).

(a) *General rule*—(1) *In general*. Under section 468A(f), a taxpayer maintaining a qualified nuclear decommissioning fund with respect to a nuclear power plant may transfer cash or property into the fund (a special transfer). The special transfer is not subject to the ruling amount limitation in section 468A(b) and is not treated as a cash

payment for purposes of that limitation. Thus, a taxpayer may, in the same taxable year, pay the ruling amount and make a special transfer into the fund. A special transfer may be made in cash, property, or both cash and property. The amount of a special transfer (that is, the amount of cash and the fair market value of property transferred) may not exceed the present value of the pre-2005 nonqualifying amount of nuclear decommissioning costs with respect to the nuclear power plant. The taxpayer is entitled to a deduction against income for a special transfer, as described in paragraph (b) of this section. A special transfer may not be made to a nuclear decommissioning fund before the first taxable year in which a deduction amount is applicable to the nuclear decommissioning fund (see paragraph (c) of this section).

(2) *Pre-2005 nonqualifying amount*—(i) *In general*. The present value of the pre-2005 nonqualifying amount of nuclear decommissioning costs with respect to a nuclear power plant is the amount equal to the pre-2005 nonqualifying percentage of the present value of the estimated future decommissioning costs (as defined in § 1.468A-1(b)(6)) with respect to the nuclear power plant as of the first day of the taxable year of the taxpayer in which the special transfer is made or deemed made (or a later date that is on or before the date on which the special transfer is expected to be made if the taxpayer establishes to the satisfaction of the IRS that the determination of present value as of such date is reasonable and consistent with the principles and provisions of this section). For this purpose, the pre-2005 nonqualifying percentage for the plant is 100 percent reduced by the sum of—

(A) The qualifying percentage (within the meaning of § 1.468A-3(d)(4) as in effect on December 31, 2005) used in determining the taxpayer's last schedule of ruling amounts for the nuclear decommissioning fund under the law in effect before the enactment of the Energy Policy Act of 2005 (that is, the percentage of the plant's total nuclear decommissioning costs that were permitted to be funded through the fund